IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

CHAMBER SUMMONS NO. 49 OF 2004
IN
SUIT NO. 1850 OF 2001

Rajendra Dongersi Momaya ....Plaintiff
vs.
Mahendra Dongersi Momaya ....Defendant

K.H. Halai for the plaintiffs.
S.M. Oak for the applicant.

CORAM: S.U. KAMDAR, J.

DATE : 30TH MARCH, 2005.

P.C. :

1. The present chamber summons has been taken out by the defendant inter-alia seeking an order that the agency agreement dated 16.8.2001 executed in favour of the plaintiff be terminated because of non-payment of royalty amount payable by him as agent of the court receiver By prayer (b) of the chamber summons a prayer is sought that the court receiver should be directed to hold fresh bids between the plaintiff and the defendant in respect of the properties which are set out in Exhibit-A to

the plaint and receiver should be directed to execute the agency agreement in favour of the highest bidder. Some of the material facts of the present case are briefly enumerated as under :

2. The suit has been filed for declaration that the property set out in exhibit-A and B to the plaint forms part of the estate of the deceased father and the plaintiff is entitled to one-third share in the estate of the said deceased. Various other reliefs are sought including for accounts of the businesses. In the said suit a Notice of Motion no. 1265 of 2001 was taken out. By an order dated 13.6.2001 the receiver was appointed in respect of the premises described in Exhibit-A to the plaint. It was further provided that the court receiver shall invite bids from the plaintiff and the defendant to act as an agent of the court receiver and the said agency will be given to the highest bidder on usual terms and conditions. Pursuant thereto the plaintiff was appointed as an agent of the court receiver. Thereafter Chamber summons no. 1279 of 2001 was taken out and by an order dated 10.10.2001

inter alia in this court permitted the plaintiff to pay the royalty amount of Rs.85,000/- directly to the defendant insted of depositing the same with the court receiver. However the plaintiff defaulted in payment and there were arrears of payment of royalty amount the plaintiff to the defendant and thus the defendant took out a further Notice of Motion no. 3409 of 2002.

3. By an order dated 16.2.2002 the learned counsel for the plaintiff undertook to this court that the unpaid amount of royalty will be paid within a period of eight weeks from the date of the said order and in an event if the plaintiff fails to pay the aforesaid arrears of royalty, prayer (b) of the motion to be made absolute which inter-alia provided for termination of the agency agreement. Thereafter again there were arrears in the payment of royalty amount and therefore one more notice of Motion no. 1345 of 2003 was taken out in which a grievance was made by the defendant that the plaintiff was appointed as agent of the court receiver has not paid dues to the Indian Oil Corporation and there is

likelyhood that the agency will be terminated and therefore the defendant will suffer. . By an order dated 20.4.203 it was directed that the plaintiff shall pay the outstanding amount to Indian Oil Corporation within a period of four weeks from the date of the said order and if the said payment is not made the agency shall be terminated.

4. Inspite of the aforesaid order the plaintiff has once again committed breach of the terms and conditions of the agency agreement by non-payment of royalty amount to the defendant as per the order dated 10.10.2001. The defendant has now once again taken our chamber summons seeking a relief that the agency agreement of the defendant should be terminated. It is an admitted position before me that as of today there is an outstanding amount due and payable by the plaintiff towards royalty amount to the tune of Rs.20,40,000/-.

5. In so far as arrears of royalty amount is concerned there is no dispute between the parties. However the learned counsel for the plaintiff has

advanced the two contentions. Firstly it has been contended that there was a novatio and a fresh arrangement was arrived at in which the dispute between the parties were required to be amicably settled and the defendant was to forego the payment of Rs.85,000/- per month the plaintiff and was entitled to adjust the said amount towards the amount due and payable by him to the plaintiff. Secondly it has been contended that by virtue of the obstructions by the defendant himself that the plaintiff is not able to run the business appropriately and therefore he is not liable to pay the aforesaid amount to the defendant at all.

5. I do not find any substance in either of the contentions. Firstly in so far as the payment of royalty amount is concerned no final settlement or agreement has been arrived at between the parties. It is undoubtedly true that there were negotiations between the parties but they were not fructified in final agreement. and therefore there has been no question of relinquishing the claim of royalty payment bby te defendant. The orders of this court

are required to be complied with unless they are altered or modified by any settlement arrived at and filed in the court. It is also admitted by the plaintiff that neither any final settlement has been arrived at nor the defendant has obtained any benefits in his favour so as to disentitle him to claim any such amount. In the aforesaid position I am of the view that the liability of the payment of the royalty charge is being consistently defaulted by the plaintiff. Time and again proceedings are required to be taken out and orders are required to be passed directing him to pay the royalty charges. In my opinion the said attitude on the part of the plaintiff cannot be permitted and condoned. In any event the plaintiff has stated that he is not in a position to make any payment of the aforesaid amount at all and in view thereof the question of my granting him any further opportunity does not arise. The next contention advanced by the learned counsel for the plaintiff is that the defendant has been obstructing the conducting of the business and therefore he has no sufficient fund to make payment of the aforesaid amount. I am not inclined to

accept the aforesaid contention as there is no material in support thereof. Thus the said contention is devoid of any merits. In any event it cannot be accepted that the plaintiff will enjoy the possession of the business and conduct the same but will not make payment of any royalty amount which is is bound to pay as a condition to run the said business.

6. In the aforesaid circumstances I pass the following order. The court receiver is directed to terminate the agency of the plaintiff forthwith. The plaintiff is directed to pay to the court receiver the arrears of the royalty charges of Rs.20,40,000/- within a period of twelve weeks from today. The receiver will forthwith dispossess the plaintiff from the suit premises and thereafter seal the premises and invite fresh bids in which the defendant will be entitled to participate but the plaintiff will not be entitled to participate. The court receiver will appoint the person with the highest bid as his agent. The agent so appointed by the court receiver will require to deposit the

royalty charges with the court receiver and not to pay to either of the parties. Chamber summons disposed off accordingly with no order as to costs.

****